IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Misc. Petition No.154/2007.
(Bhagirath Singh & Another Vs. State of Rajasthan)

DATE OF ORDER : April 04, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. G.R. Punia and Mr. K.V. Vyas for the petitioners.
Mr. Panney Singh Rathore, P.P. for the State.

BY THE COURT :

The petition is directed against order dated 11.01.2007 passed by the learned Addl. Sessions Judge, Parbatsar in Sessions Case No.05/2005 rejecting the application filed by the petitioners for examining them under Section 315, Cr.P.C.

It is submitted by learned counsel for the petitioners that the petitioners are facing trial for offence under Section 302, I.P.C. alongwith other

accused persons. It is contended that the prosecution has taken years together to complete the prosecution evidence and about 100 prosecution witnesses were examined. Thus ample opportunity has been granted to the prosecution to prove its case. It is submitted that, thereafter, opportunity for leading evidence in defence was granted to the accused persons including petitioners. In defence, the petitioners moved application with the prayer to record their statements under Section 315, Cr.P.C. and further prayed for summoning defence witness Dr. Ashok Choudhary for whom earlier notices were issued but he is government servant, therefore, he has not attended the Court; in the circumstances, in alternative, it was prayed by the petitioners that his statement may be recorded while sending commissioner. The learned trial Court has rejected the application vide the impugned order dated 11.01.2007.

Learned counsel for the petitioners submits that for rejecting the plea for recording statement under Section 315, Cr.P.C. it is observed that on 17.03.2006 it was submitted before the Court by the accused party that they are not willing to record their statements under Section 315, Cr.P.C. In this connection, learned counsel for the petitioner stated that no specific denial was made before the Court and a general observation is made that accused persons are

not willing to record their statements under Section 315. It is vehemently contended by learned counsel for the petitioners that according to the right reserved to the accused to produce his evidence in defence, the petitioners are willing to give statements under Section 315, Cr.P.C., therefore, the learned trial Court ought to have granted the opportunity.

Similarly, it is contended by learned counsel for the petitioners that once after application of mind the Court passed order to issue summons to Dr. Ashok Choudhary being defence witness as per prayer of the petitioners then his statement was to be recorded. It is submitted that admittedly summonses for the witness Dr. Ashok Choudhary were given to the counsel of the petitioners but he was unable to produce him and prayed before the Court that Dr. Ashok Choudhary be summoned through Court as defence witness as per his prayer because he is government servant, therefore, when the Court will call upon him he will give statement before the Court.

The learned Public Prosecutor vehemently opposed the prayer and submitted that petitioners are unnecessarily delaying the trial and they do not want to let the trial concluded.

I have perused the impugned order and, so also, heard arguments advanced on behalf of both the sides.

It is true that for fair trial, opportunity of adducing evidence in support of defence is valuable right and the denial of that right means denial of fair trial. In the context, recent judgment of the Hon'ble Supreme Court in the case of Kalyani Baskar (Mrs.) Vs. M.S. Sampoornam (Mrs.), reported in (2007) 2 SCC 258, may be referred to. Emphasizing the importance, the Lordships of the Supreme Court observed, -

> "The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them....."

In this view of the matter, in my opinion, last opportunity can be granted to the petitioners for recording statement of Dr. Ashok Choudhary who was summoned by the trial Court as per the prayer of the petitioners; but, somehow, he was not produced before the Court.

Therefore, for the aforesaid purpose, the trial Court is directed to issue summons to witness Dr. Ashok Choudhary and secure his presence in pursuance of the summonses through Superintendent of Police,

Ajmer. It is informed to the Court that the next date is fixed on 11.04.2007. On that date, learned trial Court shall issue summonses to witness Dr. Ashok Choudhary and his statement shall be recorded on 20.04.2007. The trial Court may record statements of the accused petitioners under Section 315, Cr.P.C. on 11.04.2007 itself. If, on that date, the petitioners will not have their statements recorded, no further opportunity shall be granted to them for this purpose.

With aforesaid directions, the miscellaneous petition is disposed of.

(Gopal Krishan Vyas) J.